

BMI: Big Money In Broadcast Music, Inc.

by Bob Gray

Like most things in the music business, the interleaving of property rights, profit, and propriety has become an increasingly difficult Gordian knot. And a growing number of venue owners feel the knot has been slipped around their throats.

The subject of property rights alone is confusing in the extreme, thanks to the major labels and the way they write and enforce contracts with performers (see: Mommas Don't Let Your Babies Grow Up to Sign Contracts). As a result, more than most of the profit has been taken out of it for the singer.

Since the average take for the performers is now at less than thirty cents from each fifteen dollar CD sold, they have come to rely on royalty collection agencies, such as BMI (Broadcast Music, Inc.) and ASCAP (American Society of Composers, Authors and Publishers), rather than on actual CD sales.

The mission statements of BMI and ASCAP (and one other *much* smaller fry whom we will ignore for the purposes of this article) is to collect and pass along royalties collected from radio broadcasts, TV and movie use, and public performances in places such as bars, restaurants and dance halls. ASCAP boasts 175,000 composers and performers for whom it collects such royalties. BMI claims almost twice that number.

If we accept ASCAP's website numbers, they collect upwards of four hundred million dollars a year, part of which is distributed among its membership. This would indicate that BMI, with over 300,000 members collects at least that, possibly twice as much. BMI claims that eighty-four cents of each dollar collected is forwarded to its membership.

Let's assume that BMI, having twice the clientele of ASCAP, collects only fifty percent more than ASCAP, and really does distribute eighty-four cents of every dollar collected. This means that BMI keeps upwards of ninety-six million dollars annually for itself – while claiming it is a non-profit agency. If this is non-profit, break me off a chunk.

But these unusual numbers don't speak to the problems BMI and the others are causing venue owners.

While using formulas of its own creation, BMI is steadily breaking venue owners – and I mean putting them out of business. These formulas are ridiculous on their face – including as they do gross square footage and numbers of speakers and video screens rather than actual customers.

For instance, a venerable dancehall in Bandera, Texas, in business for seventy years, had to close its doors recently because BMI threatened to sue them if they didn't cough up \$8,800 per year (for comparison, ASCAP requires \$250 per year). This number is based on the square footage (publicly available at the tax assessors office) of 12,000 square feet. No consideration is given to the fact that more than a third of that number is devoted to

kitchens, bar, storage and other non-customer usage. Another venue, a bar in San Antonio, has recently been assessed an annual fee of \$2500 – again without regard to how much of their computed space can actually be used by the customers.

The owners of these places have been told to expect very expensive lawsuits if they do not comply. And while each of them believes they have a winnable case, the cost to defend themselves would be many times the annual fee.

Does this put you in mind of the extortion slip-and-fall con artists use to get fifty thousand dollar settlements from businesses in lieu of having to defend themselves against million dollar bogus injury claims?

Then we come to the problem of distribution of the income these agencies claim as their *raison d'etre*. In talking to the singers and songwriters receiving checks from BMI, none feel they have received the proper amount. They range from seventeen cents to less than ten dollars. Several have even said they don't bother to deposit the checks – it would cost them more in transaction fees than the check is worth. Of them all, only one even thinks that the agency is doing the proper thing – and that not very well. Of course, they all belong – giving their explicit agreement to the agencies to collect and distribute for them.

And it is this explicit permission that gives the agencies their enormous power. Given the fact that no performer is going to be able to monitor every radio station and music venue in the country, it only makes sense to combine efforts through such an agency.

What they don't seem to realize is that they have no control over the agency – and no way to monitor its actions. It's doubtful that any performer would want to put a famous dancehall out of business in exchange for the few pennies s/he would get from the fee that might be collected. Because every time a live music venue goes under, there is one fewer places for the performer to play, to practice and polish their craft, to get their name and ability in front of the customers.

In the meantime, agencies such as BMI are keeping millions of dollars while the performer gets a few cents and the places that were paying the performer hundreds to show up are no longer around.

Is there a reasonable solution? Sure, probably several. The one that appeals the most is to base the royalty demand on actual establishment income. It makes little sense to charge a large place that is always empty more than a smaller place that is always full. Beverage sales would make a much better benchmark than the number of speakers or video screens.

If something doesn't change soon in the business, one thing is very clear: Live music venues are going to disappear. As they do, the number and variety of original compositions and performers is also going to shrink.

This plays directly into the hands of the major labels. Talented local performers, unable to make a living and develop a fan base, will get night janitorial jobs, while schlock receiving major promotion prospers.

This problem had been growing like a tumor in the music business until recent years. In Texas, and other localities, there grew up a free-market answer and a talent explosion of those who were willing to put in the time rather than go looking for a lucky break. The internet made it possible to market yourself without millions in PR investment.

The result has been a much larger pool of talent in both songwriting and performing. Every taste has found an outlet, while many of the label-signed acts have withered and died – as they should.

If the royalty collection agencies are successful in putting the live venues out of business, the bad old days are going to return with a vengeance. Your choices are going to shrink, talent is going to disappear, and we will all be poorer for it.

When the public demand for different colors in automobiles reached a frenzy after the war in the 1940's, Henry Ford, who thought he had an eternal monopoly, reportedly said that "The buyer can have any color he wants, as long as it's black." Five years later General Motors had taken half their market. We need a GM to come along soon, and change the BMI attitude. BG

The Dirty Dozen – Pitfalls and Remedies for the Musician

by Bob Gray

1. **Don't enter contests** – singing or writing – **that require entry fees of more than \$25**. The vast majority of these are bogus nonsense that you have no hope of winning. Of course there are a few exceptions – SXSW for instance. But if it isn't one you've heard of, at the very least check them out. One way is to contact (do an internet search) previous participants (NOT the winner) – see what they have to say and how many of them are going to return. And just because it's happening in Nashville or Austin doesn't mean it's not a con. Nor do the BS "credits" the sponsors list. I know two men in the Texas Hill Country who have printed up business cards listing themselves as a talent scout and a vice-president for major labels. Neither of these guys has a thimbleful of honor or ethics (or experience), but they have nevertheless managed to get themselves named to boards, committees, panel judges, and etc. This problem stems from the willingness of performers and writers wanting to believe. Make your number one rule: If you are the performer, you DON'T pay them; they pay you.
2. **Don't sign away ANY rights to your music unless you are being paid**. This applies to any and every situation. You find a producer, you pay him to produce your music. He does NOT end up owning that music. This happens more often than you can believe. I know a young woman whose family mortgaged their home to pay for a producer and studio time and back up musicians. They didn't even receive a copy of the recording! A friend of mine heard about it and had to threaten to sue to get the girl the rights to her music returned. She and her family were still out several thousand dollars – nothing to be done about it. The contract was legal. Which brings up point number...
3. **Get your own lawyer**. Don't use the one the other side is using, nor one they recommend. In fact, get one from your hometown (or at least another town than the one in which the other side lives and works). Try to find one who specializes in entertainment law. Don't introduce him/her to the other side until and unless absolutely necessary. Take the contract you are considering and ask him/her to read it and explain every single clause. While it may cost you a few hundred, it can easily save you many thousands, not including heartache. Look, the guy on the other side of the desk holding the key to your dreams may seem like your best friend this split second. But keep in mind that he has been through dozens of these deals – you haven't. His life is contracts and clauses. With the exceptions of a car purchase or apartment lease, you have probably never dealt with contracts. Odds against are even greater that you've ever been in the same room with a contract as long and tedious - both boring and deadly - as a label contract. You need your own guy.
4. **Know what you are doing**. If you spend more than ten minutes saying "Check, check" into the microphone, either you or the equipment is not appropriate for the gig. If your playing doesn't sound like music unless you're plugged in – it's not music. If you can't play unless the sound system is rattling the plumbing, then you shouldn't play. Yes, some music sounds better when enhanced with

- gimmicks and amplification. But if it's unrecognizable as music before those things are applied, even by you, then don't waste everyone's time.
5. **Always show up.** That includes for open mike night if you're on the list. So, okay, you broke your leg yesterday. Show up anyway, even if you can't play. Nothing gets around among venue owners faster than no-shows. Show up on time. Be ready to play. The Beatles played the Ed Sullivan Show with the flu. They sounded like crap – and received nothing but praise for their dedication. If you're a pro you show up and you go on. If not, then you're not a pro, and you shouldn't try to charge people to listen.
 6. If you're a songwriter - **get a good rhyming dictionary.** Don't make up words unless they are self-explanatory. Don't try to force a rhyme where none exists. And spending hours trying to guess at what rhymes – using the alphabet one letter at a time (ooze – booze, cooze, dues, fooze, goos, hooze, etc.) is not the most efficient use of yours.
 7. **Send thank you notes.** Send them to the venue owner/manager, any writer that puts your name in print (even if he hates your sound – fame has a down side, but without it you have nothing), the venue booking agent, anyone who helps you in a significant way. Sure, you're going to say thanks when you meet them. But send a note anyway – *that* they will remember.
 8. **Buy the book *The Musicians Business and Legal Guide*,** from Jerome Headlands Press. It will answer lots of questions, and save you money and heartache. But of course you have to read and understand it. Given the enormous investment in time and materials you are going to put into your career, take a small fraction of it and study this book.
 9. **Tip your waitress.** The meal may be free because you're a performer, but the server bringing your meal is working for tips. If you want good service, if you want to be welcomed back, if you don't want ground glass or goobers in your food – tip your waitress.
 10. **Don't cause trouble.** Alcohol is the cause of most problems arising between performers and audience or venue managers/owners. If you're a guy, then we already know that you started your band to get chicks. But if you start hitting on women in the audience you are eventually going to get hurt. If a woman in the audience starts flirting with you - make damn sure she's not with a man before you even acknowledge her. She may be trying to start a fight, or simply make her escort jealous. A fat lip isn't going to help your performance. Don't use the stage as a place to make your personal preferences an issue. No one is paying to hear that you hate Republicans or Democrats or the Dallas Cowboys, so why alienate fans and venue management with gratuitous vituperation? Keep your drinking to a minimum – a beer an hour won't cloud your judgment. Three tequila shooters an hour will.
 11. **Plan as far in advance as bookings will permit.** Six months is a good target. There is an economy to this scale – such things as travel and accommodations get easier with lead-time. And send confirmation notices thirty days in advance and again about a week in advance of the appearance date. This sets the mind of the venue owner/manager/booking agent at ease – you are coming and s/he can count

on it without having to call and remind you – or book a contingency act in case you have forgotten.

12. **Become active in** a local musician's conference – **Texas Music Coalition** (www.texasmusiccoalition.org) for instance. Here you will be able to share the experiences of other groups, discover which venues treat you well, and find a good bass player when yours runs off to Vegas without notice. Go to the meetings, actively network, take part in committees and studies conducted. This is an excellent early warning source against some of the creeps and BS mentioned in paragraph one above.

There are many more things to know and consider – BMI/ASCAP affiliation, Library of Congress copyrighting, finding a good producer, and etc. The book mentioned in paragraph 8 will help with most, as will active participation in musician's coalitions, noted in paragraph 12. But keep in mind that no amount of advice will benefit you if ignored. BG